

1 the Continuing Guaranty. Lesk admits this action is a maritime and admiralty claim within the
2 provisions of Rule 9(h) of the Federal Rules of Civil procedure and within the Supplemental
3 Rules for Certain Admiralty and Maritime Claims and of the Court.

4 2. Lesk is without knowledge or information sufficient to admit or deny the
5 allegations of Paragraph 2 of the Complaint, and therefore denies the same.

6 3. Lesk admits that the vessel MACHIAVELLI, Official Number 1167583 is a
7 Sunseeker ("Vessel"), and is within the navigable waters of the United States and within the
8 jurisdiction of the Court. Lesk denies that the Vessel is 82". Lesk admits that the approximate
9 value of the Vessel is more than \$2,000,000.00.

10 4. Admitted.

11 5. Denied.

12 6. Lesk admits only that he is an individual residing in the County of Maricopa,
13 State of Arizona, and is the managing member of BDL Worldwide L.L.C. Lesk denies the
14 remaining allegations in the Complaint.

15 7. Paragraph 7 of the Complaint contains no allegations directed to Lesk, and they
16 are therefore denied. The Promissory Note and Loan Agreement, respectively marked as
17 Exhibits "1" and "2" to the Complaint, speak for themselves.

18 8. Paragraph 8 of the Complaint contains no allegations directed to Lesk, and they
19 are therefore denied. The Preferred Ship Mortgage, marked as Exhibit "3" to the Complaint,
20 speaks for itself.

21 9. Paragraph 9 of the Complaint contains no allegations directed to Lesk, and they
22 are therefore denied. The Abstract of Title of the Vessel, marked as Exhibit "4" to the
23 Complaint, speaks for itself.

24 10. Lesk admits that he executed the Continuing Guaranty as a condition precedent
25 to Plaintiff entering into the Promissory Note and Loan Agreement. All remaining allegations,
26 including the allegation that the Continuing Guaranty was executed and delivered "on or about
27 January 26, 2009," are denied.

28 11. Paragraph 11 of the Complaint contains no allegations directed to Lesk, and they

1 are therefore denied.

2 12. Paragraph 12 of the Complaint contains only legal conclusions to which no
3 answer is required, and it is therefore denied.

4 13. The first sentence of Paragraph 13 of the Complaint contains only legal
5 conclusions to which no answer is required, and it is therefore denied. Lesk is without
6 knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 13
7 of the Complaint, and therefore denies the same.

8 14. Lesk is without knowledge or information sufficient to admit or deny the
9 allegations of Paragraph 14, and therefore denies the same.

10 15. Lesk is without knowledge or information sufficient to admit or deny the
11 allegations of Paragraph 15, and therefore denies the same.

12 **PRAYER FOR RELIEF**

13 Lesk hereby denies that Plaintiff is entitled to judgment on any allegations or counts
14 asserted in the Complaint, and further denies that Plaintiff is entitled to the relief requested in
15 the Complaint.

16 Lesk further avers that any allegations not deemed to be specifically addressed in this
17 Answer are hereby denied.

18 **AFFIRMATIVE AND OTHER DEFENSES**

19 In asserting the following affirmative and other defenses to Plaintiff's claims, Lesk does
20 not concede that the assertion of such defenses imposes any burden of proof on Lesk with
21 respect thereto. Lesk has not yet completed his investigation and, to the extent that
22 investigation and/or discovery warrant, reserves the right to supplement, amend or delete any or
23 all of the following affirmative or other defenses prior to any trial of this action.

24 **FIRST AFFIRMATIVE DEFENSE**

25 The Complaint fails to state causes of action upon which relief can be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 The causes of action alleged in the Complaint are barred, in whole or in part, because
28 Plaintiff failed to mitigate damages.

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THIRD AFFIRMATIVE DEFENSE

The causes of action alleged in the Complaint are barred, in whole or in part, by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

The causes of action alleged in the Complaint are barred, in whole or in part, because Lesk's actions were undertaken in good faith with the absence of malicious intent, and constitute lawful, proper and justified means to accomplish legitimate business objectives.

FIFTH AFFIRMATIVE DEFENSE

The causes of action alleged in the Complaint are barred, in whole or in part, because Plaintiff's injuries and damages, if any, were caused by a superseding cause.

SIXTH AFFIRMATIVE DEFENSE

The causes of action alleged in the Complaint are barred, in whole or in part, because Plaintiff's damages, if any, were caused, in whole or in part, by Plaintiff's own actions or by parties unrelated to Lesk.

SEVENTH AFFIRMATIVE DEFENSE

The causes of action alleged in the Complaint are barred, in whole or in part, because Lesk substantially complied with any and all applicable statutes, regulations and/or laws.

EIGHTH AFFIRMATIVE DEFENSE

The causes of action alleged in the Complaint are barred, in whole or in part, by the mandatory arbitration provision in paragraph 6.1 of the Loan Agreement and paragraph 4.2 of the Continuing Guaranty.

NINTH AFFIRMATIVE DEFENSE

The causes of action alleged in the Complaint are barred, in whole or in part, because Plaintiff acted with full knowledge and understanding of the relevant facts and circumstances surrounding the transactions and relations at issue in this litigation and assumed the risk due to the acts and omissions of the Plaintiff and of third parties.

TENTH AFFIRMATIVE DEFENSE

1 Lesk reserves the right to assert other affirmative defenses when and if it becomes
2 appropriate in this action, and reserves the right to amend this Answer to assert such additional
3 defenses in the future or at trial.

4 **REQUEST FOR RELIEF**

5 Lesk prays that this Court enter judgment against Plaintiff as follows:

- 6 1. Dismissing Plaintiff's Complaint with prejudice;
7 2. Declaring that Plaintiff recovers nothing from Lesk;
8 3. Awarding Lesk his costs and attorneys' fees in this action; and
9 4. Granting Lesk such other and further relief as this Court deems just and proper.

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12 WRIGHT & L'ESTRANGE
13 Attorneys for Defendant Brian D. Lesk

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15 Dated: August 27, 2010

16 /s/ Alexander T Gruft
17 Alexander T Gruft
18 agruft@wllawsd.com
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